

State of the Judiciary Address to a Joint Session of  
the Missouri General Assembly  
Hon. John C. Holstein, Chief Justice  
Supreme Court of Missouri  
January 16, 1997

Mr. President, Mr. Speaker, Members of the General Assembly, Ladies and Gentlemen:

The millennium is upon us. The last time we entered a new millennium, there were ominous predictions of wars of Armageddon, pestilence, and death. And with good reason. If you were to look at the world a thousand years ago, it was not a very happy place to live. Most children didn't live to reach school age. And, of course, there were no schools as we know them. Such reading and writing as existed was done in monasteries in a language that was used by no one in daily conversation. Such laws as existed were written in Latin and were edicts of a king rather than the deliberate acts of a popularly elected legislative body. One significant difference between the law then and the law now is the ability to communicate the law to every citizen. No one could have predicted in the year 997 the means of communication that would be invented. It began with the printing press and extended through the microchip. But all this information is here, and we in government must learn to harness it and use it.

A thousand years ago, the people believed that trial by fire or trial by water were valid methods of determining the truth. It would be a couple of centuries before the guarantee of a right to a jury trial would find its way into our common law system. It would not be until this country was founded that the right to a jury trial would be permanently placed in state and federal constitutions. The jury trial has served us well. It is a marriage of the best of our legal system and of democracy. It was born in England, but it grew to maturity here. Modern constitutions have given the promise of other rights that we all hold dear when we find ourselves in court; the right to counsel, a fair and speedy hearing before an impartial judge, and equality for every citizen in the courts. While our court system is populated by humans and is capable of making mistakes, it also has the wonderful ability to correct mistakes. I hope the members of this body would approach any change in our state court system with a healthy degree of skepticism. But there are areas of our law where change is essential.

As I noted last year, for more than twenty years, the chief justice of the Missouri Supreme Court has been invited to speak to the General Assembly. We are grateful for that opportunity. One of my predecessors, when he was chief justice, Robert Donnelly, spent most of his time speaking of the tension that had developed between the state and federal courts regarding federal intervention in state cases. He pointed out that individual federal trial judges were, in effect, overruling decisions of the Missouri Supreme Court, particularly in criminal cases. He suggested that there may be little reason for state courts to review post-conviction claims in capital cases. Chief Justice Donnelly's frustration was not ignored. But it took more than 15 years for his message to sink in.

In recent habeas corpus reform by Congress, strict limitations were placed on the power of federal courts to review state convictions. However, to obtain the benefit of those limitations on federal habeas corpus review, the state had to reaffirm its obligation to ensure adequate representation of defendants in capital cases.

The Missouri Supreme Court, in an effort to ensure that such federal review and its accompanying delay is minimized, adopted a rule effective on July 1, 1997. It requires that public defenders designated to represent indigent defendants in post-conviction capital cases must meet minimum experience requirements. Unquestionably, there will be a cost associated with this. Some view this as a shifting of responsibility by the federal government to the states. The fact is, it is the state that makes the

determination that it will seek the death penalty and, therefore, it is only appropriate that the state pay its costs. I see the federal habeas corpus reform not so much as Congress instructing the state on how defendants in capital cases should be represented but, rather, a recognition of the state's inherent responsibility to ensure adequate representation of every indigent defendant that is called to account in its courts. The public defender must have the resources to hire and retain experienced attorneys. These resources must include reasonable salaries, office facilities and support staff. I would urge both the Governor and you as you consider the budget request of the public defender commission to take into account its needs for adequate office space and staff salaries. These are essential to secure the promise that effective and experienced attorneys will be representing indigent defendants in criminal cases.

Last year, you will recall I told you that I had recently appointed a committee to study court security in Missouri. The committee, headed by Chief Judge Robert Ulrich of the Missouri Court of Appeals, Western District, reported back late this summer. One of the recommendations in the report was that the responsibility of the marshals for security of the Supreme Court and Court of Appeals buildings and judges should be spelled out in the statutes. We will be seeking legislation this year to make clear that the marshals and security officers have the necessary authority and the responsibility to provide such security. Other steps are being taken to heighten the awareness of local circuit courts, courthouses, and sheriffs regarding evolving security issues. We will be seeking authority to employ a court security specialist to provide advice and assistance to local circuit courts in these matters.

To ensure equal justice under law demands access by all, even the poor. In the past, it has been a combination of free work by lawyers plus federal funding and private contributions that have ensured that the poorest people in Missouri are able to access Missouri's courts.

Lawyers are doing their fair share. In fact, some are doing more than their fair share in representing the poor. In Missouri, there are 3,000 lawyers who regularly take cases without fee from six legal services offices located in the state. That accounts for more than 15% of the legal aid services cases in Missouri. In addition, there are thousands of attorneys who represent their clients for little or no fee, but receive no recognition for it in the statistics of the legal services agencies. I know of no profession that does more to help the poor than do these attorneys. The Missouri Bar Board of Governors is taking steps to encourage increased private contributions and lawyer participation in legal services. This is a story that the news media simply does not cover.

Even though lawyers are providing enormous amounts of money and energy to this cause, I challenged them to do more at the annual meeting of The Missouri Bar. I am today asking the state of Missouri to do more. Federal funds are drying up. But this is a **state** justice system, and the state has the responsibility to keep that system open to all who need access. As you did last year for the first time, I would ask that you continue to provide funding for legal services so that the poorest among us will have access to our system of justice. Indeed, unless the very poorest do have access to our court system, it is difficult to consider it fully a system of justice.

In most areas, the growth in case loads has been modest. But the caseloads continue to grow at an alarming rate in the area of family law. More than 14,000 more domestic relations cases were filed in 1996 than in 1992. Through transfer projects, we have been able to move judges to where the caseloads exist in order to maximize the number of cases that can be disposed of by our courts. In general, we either transfer judges or rely on senior judges to handle these growing caseloads. In particular, during FY96, 34 retired judges accepted assignment to serve as senior judges. Those judges provided the courts with 455 weeks of judicial service. Senior judges have proved most valuable where vacancies had occurred due to retirement or illness, or caseloads demanded attention. These judges have kept dockets current until a replacement was appointed or in order to keep the court current. In effect, our senior judges have

provided us nearly 10 judges in the fiscal year 1995-96. I want to thank the General Assembly for fully funding the senior judge program, and I would ask you to continue to fully compensate these judges for their work. They are doing an outstanding job.

At the 1996 meeting of the Judicial Conference, it was recommended that our circuit court clerks all be appointed. First, let me say that in my personal contact with elected circuit clerks, most, if not all elected circuit clerks are doing an excellent job. However, the position is critical to the operation of the circuit courts. There is no reason that good circuit clerks should not have the same job security as is held by deputy circuit clerks. As all of you are keenly aware, it takes an inordinate amount of time, money and energy outside the courthouse to run for elective office. That is time taken away from managing the millions of dollars, the records, and hundreds of personnel who work for the courts. The number of cases, the amount of money and the complexity of our courts require the constant attention of those in a managerial position. By making the clerks responsible to the judges who, in turn, are responsible to the people for running the courts, we will assure a close working relationship and, I believe, a more efficient operation of the circuit courts. I commend the proposal of the Judicial Conference to you for your consideration.

Being a court clerk is no longer the uncomplicated job of keeping the files. Today clerks assist claimants in filling out small claims petitions, prepare adult abuse pleadings and give advice to potential litigants. They handle millions of dollars in child support collections. These are tasks that clerks ten years ago would not be asked to do. Clerks must know the fundamentals of using spreadsheets, databases and word processing in the new electronic world. These clerks are in need of training to keep up with the increasing sophistication that is occurring in the court operations. With computerization we must take steps to keep clerks in touch with the new technology now being placed in the courts across the state. We are asking the General Assembly to appropriate funds to provide training to the more than 1,800 clerical staff in the circuit courts. We need to establish a permanent inservice professional training program for clerks equivalent in amount and quality to that provided for other state employees.

The vision of the Missouri court automation project is service, justice and access. Last year, I mentioned the electronic library on compact disks made available to all judges. During the past year, we have adopted a computer network architecture plan which established standards for the wiring, software and hardware for the new automated system. Pilot courts are being assessed and brought into alignment with those equipment standards.

We now have a statewide electronic mail communication system. We are making better use of the internet. As I reported last year, cases of the Missouri Supreme Court are now in full text on the internet. Last month, the cases of the Missouri Court of Appeals, Eastern District, were placed on the internet. We anticipate that the other two districts of the court of appeals and several circuit courts will also have information available on line in the very near future.

As the circuit courts come onto the internet, they will be able to give detailed information not only to lawyers but to all citizens about dockets, where to file small claims or an adult abuse action, telephone numbers to call to obtain legal assistance, and even forms for simple claims that may be prosecuted without an attorney.

During this summer and fall, we have begun procurement of a case management system, a system that will apply to all divisions of all courts across the state. There are 27 pilot project sites, but there are two that will be the primary test sites, Montgomery County and Jackson County. It is our belief that if we can make the case management system work in both of those counties, it will work in every county of the state. The case management system is the critical centerpiece of court automation. With the case

management system and the legislation you passed last year, we will be able to ensure accurate, uniform assessment and collection of costs. Internal and external electronic audits will be possible. Fast and accurate electronic transfer of funds from local courts to the agency entitled to those funds will become possible. The case management system extends to every aspect of every case, from civil to criminal, from juvenile to probate, from small claims to appeals. Once complete, it will give people outside the courts, including executive agencies, law enforcement, attorneys, news media and ordinary citizens access to information. It is an ambitious project. No state has successfully accomplished a statewide, all-encompassing case management system. Some have tried and failed. We've learned from those failures. We have moved cautiously. We've had a number of intermediate successes. All that is missing is the necessary funding to move forward into the last five years of the project.

As most of you are aware, the name of our court automation project was EC/2004, referring to the fact that we believed from the beginning that it was a ten-year project. However, the startup funding through court costs was only provided for five years.

The successes already mentioned have proven that we have developed an electronic court system that has the capacity to connect all courts in the state with each other and all lawyers with the courts. Indeed, all citizens of the state are now connected with the judicial branch of government through the internet and electronic mail. In order to complete the mission which the courts have been given, and for this valuable project to continue, it is now necessary that we extend the funding to the year 2004, as originally envisioned.

We are asking that the court costs of \$7.00 per case be extended to the year 2004. In addition, we will be working to develop a long-term, stable method to ensure the revenue to maintain the system and ensure staff training for those who will be operating the system.

You have a working judiciary. I am very proud to be a part of it. The most obvious evidence of that work is in case disposition rates. Since adopting case disposition time standards in 1994, the time between filing and disposing of felony complaints has dropped 36%. For misdemeanor informations, the time for disposing of cases has dropped 45%. In the area of domestic relations, the time for disposing of cases, statewide, has dropped 32%. Again, I think our judges and the lawyers who try cases before them are to be complimented on the way they move cases. It has also required the efforts of every clerk in the state to maintain this kind of growth. Whatever may be happening in other states, I'm pleased to report to the legislature that in Missouri there are no case overloads in any circuit.

As some of you know, I have an office which stands opposite the capitol, in the red brick building. In a few weeks, I'll look across the lawn in front of the capitol and I'll see the tulips and daffodils begin to push up through the earth. The grass will again turn green. The trees will begin to bud. Dozens of yellow buses will begin to appear in the driveway in front of the capitol building. Out of those buses will come thousands of young people. Among them are tomorrow's voters, representatives, senators and chief justices. They're usually boisterous, and some of them are even unruly. At times they'll clog the hallways and make it difficult for us to move from one place to another here in the capitol building or over in the supreme court building.

Yet one of the great pleasures of my work has been to visit with some of these young people. I try to explain to them something about the building and give them a sense of Missouri history and a broad idea of what the courts do. Then I usually open it up for questions.

Last year, I was set back on my heels by a question of a fifth grader. He asked why these buildings are so fancy. I had to think a minute. Why do we have the ornate buildings, the high ceilings, the marble pillars

and the words of great thinkers and spiritual leaders chiseled in the walls? Why do we have the inlaid wood and the beautiful works of art both in and outside the buildings? As I thought about that question, the answer came to me. The buildings remind those of us who work here that we're only here temporarily. The buildings and the values chiseled into the walls were put here years before we came, and will be here years after we're gone. We're merely the caretakers of a dream. Our purpose is to pass on the dream, established by others and inculcated in us, to another generation.

The words we use today are new: electronic courts, judicial resource allocation, case disposition standards. Next year, there will be a new chief justice with new ideas and renewed enthusiasm for the work. It's our form of term limits. But for our state courts, the dream remains constant: to provide a just and speedy disposition of every case on its merits and to make that system of justice accessible to all citizens of Missouri. We pledge to join hands with you to make this dream a reality.

Thank you again for allowing the chief justice to share these thoughts with you.